



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

DEC 22 2008

Mr. Marc E. Elias, Esq.
Perkins Coie LLP
607 Fourteenth Street, NW
Washington, DC 20005-2011

RE: MUR 5575
Tony Knowles for US Senate
Committee and Leslie Ridle, in
her official capacity as treasurer

Dear Mr. Elias:

Based on a complaint filed with the Federal Election Commission on October 20, 2004, and information supplied by your clients, Tony Knowles for US Senate Committee and Leslie Ridle, in her official capacity as treasurer ("Committee"), the Commission, on April 3, 2006, found that there was reason to believe the Committee violated 2 U.S.C. § 441a(f), and instituted an investigation of this matter.

After considering all the evidence available to the Commission, the Office of the General Counsel is prepared to recommend that the Commission find probable cause to believe that a violation of 2 U.S.C. § 441a(f) has occurred.

The Commission may or may not approve the General Counsel's recommendation. Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within 15 days of your receipt of this notice, you may file with the Secretary of the Commission a brief (ten copies if possible) stating your position on the issues and replying to the brief of the General Counsel. (Three copies of such brief should also be forwarded to the Office of the General Counsel, if possible.) The General Counsel's brief and any brief which you may submit will be considered by the Commission before proceeding to a vote of whether there is probable cause to believe a violation has occurred.

If you are unable to file a responsive brief within 15 days, you may submit a written request for an extension of time. All requests for extensions of time must be submitted in writing five days prior to the due date, and good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

You may also request an oral hearing before the Commission. See Commission's "Procedural Rules for Probable Cause Hearings," 72 Fed. Reg. 64919 (November 19, 2007).

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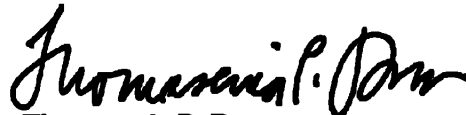
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Hearings are voluntary, and no adverse inference will be drawn by the Commission based on a respondent's decision not to request such a hearing. Any request for a hearing must be submitted along with your reply brief and must state with specificity why the hearing is being requested and what issues the respondent expects to address. The Commission will notify you within 30 days of your request for a hearing as to whether or not the request has been granted.

A finding of probable cause to believe requires that the Office of the General Counsel attempt for a period of not less than 30, but not more than 90 days, to settle this matter through a conciliation agreement.

Should you have any questions, please contact Christine C. Gallagher, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Thomasenia P. Duncan
General Counsel

Enclosure
Brief

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1 **BEFORE THE FEDERAL ELECTION COMMISSION**

2
3 In the Matter of)

4)
5 Tony Knowles for U.S. Senate Committee and Leslie Ridle,)
6 in her official capacity as treasurer)

MUR 5575

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9 **GENERAL COUNSEL'S BRIEF**

10
11 **I. INTRODUCTION**

12
13 This matter was generated by a complaint filed with the Federal Election Commission by
14 Timothy A. McKeever alleging that the Tony Knowles for U.S. Senate Committee and its
15 treasurer ("Knowles Committee") violated the Federal Election Campaign Act of 1971, as
16 amended, ("the Act"). The Commission found reason to believe that the Knowles Committee
17 violated 2 U.S.C. § 441a(f) based on information suggesting that the Alaska Democratic Party
18 and its treasurer ("ADP") made, and the Knowles Committee received, excessive coordinated
19 contributions when ADP distributed printed materials promoting Knowles or attacking his
20 opponent, which did not appear to fit within the "volunteer materials" exemption of the Act. The
21 ensuing investigation revealed evidence that the expenditures the Knowles Committee and ADP
22 claim are covered by the Act's volunteer materials exemption did not satisfy the necessary
23 criteria and were coordinated.

24 Based on the following factual and legal analysis, the General Counsel is prepared
25 to recommend that the Commission find probable cause to believe the Tony Knowles for
26 U.S. Senate Committee and Leslie Ridle, in her official capacity as treasurer violated
27 2 U.S.C. § 441a(f).

28 **II. FACTUAL AND LEGAL ANALYSIS**

29 Tony Knowles was a 2004 candidate for U.S. Senate from Alaska. From
30 September 1, 2004 through October 28, 2004, ADP produced and distributed

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1 communicative materials promoting Knowles or attacking his opponent that cost at least
2 \$944,331, all of which ADP originally disclosed in its FEC disclosure reports as
3 disbursements exempt from the Act's definitions of "contribution" and "expenditure."

4
5
6 Because the violations in this matter stem from excessive
7 coordinated contributions by ADP to the Knowles Committee, it is necessary to show (1)
8 the volume of costs incurred by ADP that were not, in fact, exempt from the Act's
9 definitions of "contribution" and "expenditure," (2) that ADP and the Knowles
10 Committee coordinated the non-exempt communications for which ADP paid, (3) that the
11 resulting in-kind contributions exceeded the Act's limitations on what ADP could
12 contribute to the Knowles Committee during the relevant time period, and (4) that the
13 Knowles Committee knowingly accepted the excessive contribution from ADP. We
14 address these issues below.

15 **A. In Excess of \$600,000 of ADP's Disbursements Were Not Eligible for the**
16 **Volunteer Materials Exemption**

17
18 The Act limits the amount that a state party committee may contribute to or spend
19 on behalf of a federal candidate. 2 U.S.C. §§ 441a(a)(2)(A), 441a(d). However, the
20 terms "contribution" and "expenditure" are defined by the Act and the Commission's
21 regulations to exclude the payment, by a state committee of a political party, of the costs
22 of campaign materials (such as pins, bumper stickers, handbills, brochures, posters, party
23 tabloids, and yard signs) used by such committee in connection with volunteer activities
24 on behalf of nominees of such party, provided among other things, that the materials are
25 not purchased with funds donated by the national committee to such state committee for
26 the purchase of such materials. 2 U.S.C. §§ 431(8)(B)(ix) and (9)(B)(viii), 11 C.F.R.

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1 §§ 100.87(g) and 100.147(g). If the expenses are not exempted from the "contribution"
2 and "expenditure" definitions, then the expenses are subject to the Act's limitations.

3 2 U.S.C. §§ 441a(a)(2)(A) and 441a(d).

4 During the 2004 election cycle, ADP used \$675,926 in funds transferred from the
5 Democratic Senatorial Campaign Committee ("DSCC"), a national party committee, for
6 disbursements for communicative materials benefiting the Knowles Committee that were
7 originally disclosed by ADP as exempt. This conclusion is based on our review of 16
8 targeted disbursements, totaling approximately \$944,331, made by ADP to four vendors:
9 AMS Communications, Inc., The Stake Shop, Super Signs, Ltd., and Color Art Printing
10 during the period of September 1, 2004 through October 28, 2004.¹ Applying a
11 conservative "modified FiFo" (First in-First out) analysis based on the dates of receipts
12 and disbursements disclosed on ADP's FEC reports, we calculated the funds available on
13 the date of each of the targeted disbursements to determine whether sufficient non-
14 national party funds were available in ADP's federal account to (partially or entirely)
15 cover the disbursement in question.² That calculation showed that \$675,926 of ADP's
16 disbursements for purportedly exempt materials were actually paid with national party

¹ A targeted disbursement means a payment claimed by ADP to be for "exempt" materials.

² The "modified FiFo" analysis utilizes the "standard FiFo" approach to establish the application of funds until the date of the disbursement(s) in question. On that date, the targeted disbursement is deemed to be paid for, in whole or in part, with any non-national party funds available in ADP's federal account. The disbursement would be considered to be partially or entirely paid for with national party funds only if ADP had exhausted its supply of non-national party funds on the day the disbursement was reported as being made. This analysis, used by the Commission in MUR 3248 (New York State Democratic Committee), is more beneficial to the Committee than the "standard FiFo" analysis. Under the "standard FiFo" analysis, the assumption is not made that all non-national party funds are first exhausted to pay a targeted disbursement. Applying a "standard FiFo" analysis, the amount of purportedly exempt disbursements paid for with national party funds in this matter would be \$849,769.

1 committee funds.³ Therefore, these disbursements were not eligible for the volunteer
2 materials exemption and were subject to the Act's limitations.⁴

3 **B. ADP Coordinated the Non-Exempt Disbursements with the Knowles**
4 **Committee**

5
6 A communication is "coordinated" if it meets a three prong test: (1) payment by a
7 political party or its agent; (2) satisfaction of at least one of the four content standards set
8 forth at 11 C.F.R. § 109.37(a)(2); and (3) satisfaction at least one of the five conduct
9 standards set forth in 11 C.F.R. § 109.21(d). See 11 C.F.R. § 109.37(a). A payment for a
10 communication satisfying all three prongs is either an in-kind contribution to, or a
11 "coordinated party expenditure" on behalf of, the candidate with whom it was
12 coordinated. 11 C.F.R. § 109.37(b). Here, the non-exempt disbursements meet all three
13 prongs.

14 The first prong of the coordinated communication analysis is satisfied because
15 ADP paid for all of the materials at issue. The second prong, the content standard, is

⁴ Our investigation also uncovered evidence that not all of the purportedly exempt communications involved sufficient volunteer activity to qualify for the exemption, even if the funds to purchase them had not come from the DSCC. For example, according to ADP the materials that were not mailed "would have been distributed through door-to-door canvass[ing] and at community events, meeting, etc., by a combination of paid and volunteer labor." ADP Subpoena Response to Question 8.f. For materials that were mailed, ADP volunteers operated directly out of the mail facilities of North Mail, Inc. ("North Mail"), a mail vending company based in Anchorage. While the evidence shows that volunteers printed addresses on the mailers and sorted and bundled them, it appears that a North Mail employee delivered them in a company truck to the U.S. Post Office. See MURs 5824/5825(Pennsylvania Democratic State Committee) and MUR 5837(Missouri Democratic State Committee)(volunteer involvement in delivering mailers to the Post Office is a factor in determining eligibility for the volunteer materials exemption). Given that we were unable to quantify the amount of non-volunteer activity, and the evidence that \$675,926 of the materials were paid for with funds from the DSCC, it is not necessary to rely on the non-volunteer activity to disqualify the materials from the exemption.

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1 satisfied because the materials qualify as "public communications" under 11 C.F.R.
2 § 100.26, clearly reference Tony Knowles or his opponent, and were distributed within
3 90 days of the general election, all to residents of Alaska. See 11 C.F.R.
4 § 109.37(a)(2)(iii)(A)-(B). Specifically, based on invoices listing the quantity of each
5 separate mailing, these materials would be classified as "mass mailings" as defined at
6 11 C.F.R. § 100.27, which is one of the specifically enumerated types of "public
7 communications." See 11 C.F.R. § 100.26. In addition, the other non-exempt printed
8 materials constitute forms of "general public political advertising" within the meaning of
9 11 C.F.R. § 110.11(c)(2)(i)(including "flyers" and "signs" in a listing of printed public
10 communications requiring disclaimers).

11 Further, of the printed materials paid for by ADP, all but one clearly identified
12 Tony Knowles and/or his opponent, Lisa Murkowski. See footnote 5, *infra*. These
13 materials typically included statements favorable to Knowles (e.g., "Tony Knowles – A
14 Strong, Independent and Effective Leader . . .") or critical of Murkowski (e.g., "Lisa
15 Murkowski Has Turned Her Back On Those Who Served"). Based on dates indicated on
16 the materials and dates included in vendor invoices and ADP's disclosure reports, the
17 available evidence indicates that these materials were distributed in the two months
18 preceding the general election.

19 The third prong of the coordination analysis, the conduct standard, is satisfied
20 here because the evidence shows that the Knowles Committee was intimately involved in
21 decisions concerning the content and other aspects of the materials at issue. See 11
22 C.F.R. § 109.21(d)(1)-(3). Evidence obtained during the investigation shows that James
23 Messina, who served as Campaign Director for the Knowles campaign, interacted
24 directly with the primary mail vendor and with other Knowles staff in the design and

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1 distribution of the materials at issue. Messina was employed simultaneously by ADP and
2 the Knowles Committee from June 2004 through the November election. According to
3 the Knowles Committee:

4 Mr. Messina's role within the Knowles campaign focused on
5 oversight of communications strategy. He also served as the
6 Knowles campaign's main liaison to the ADP coordinated
7 campaign and its exempt activities program. He reported to both
8 [Knowles Campaign Manager] Leslie Ridle and [ADP Executive
9 Director] Bridget Gallagher. His salary was allocated on a 50%
10 basis between the Knowles campaign and the ADP.

11
12 Knowles Subpoena Response to Question 1. The Knowles Committee further
13 acknowledged that it "provided information concerning Tony Knowles that was used in"
14 ADP's materials, and that Messina and Knowles Campaign Manager Leslie Ridle
15 reviewed the materials "for accuracy about Tony Knowles' record." *Id.*, Response to
16 Question 4.

17 According to Messina, after determining what issue should be covered in a
18 particular piece, he would ask the Knowles Committee research staff for any information
19 they had on the issue. The head of Knowles' research staff would typically work up a
20 fact sheet for Messina, who then created a preliminary draft of the piece that was fact-
21 checked by the research staff. After Messina worked with the main vendor to design the
22 graphics and format the language, the piece was generally reviewed by Knowles'
23 campaign manager, Leslie Ridle, who sometimes made content suggestions. The vendor
24 would then draft a final version and send it to a printing vendor located in Alaska.
25 Messina would provide mailing lists for each piece to the printing vendor after discussing
26 with Leslie Ridle who should receive that particular piece.

27 The level of involvement of the Knowles Committee concerning the content, style
28 and audience for the materials, clearly satisfies the "material involvement" conduct

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1 standard set forth at 11 C.F.R. § 109.21(d)(2) (candidate or authorized committee is
2 involved in decisions regarding a printed communication's content, intended audience,
3 means or mode, specific media outlet, the timing or frequency, or size and prominence of
4 the communication). Consequently, payments made by ADP for these materials
5 constitute coordinated party expenditures made in connection with the Knowles
6 Committee that were subject to applicable contribution limitations. See 2 U.S.C.
7 §§ 441a(a)(2)(A) and 441a(d). As set forth below, ADP's payments exceed these limits.

8 **C. The Knowles Committee Knowingly Accepted Coordinated Party**
9 **Expenditures from ADP Exceeding the Act's Limits**

10
11 Pursuant to the party expenditure limits set forth at 2 U.S.C. § 441a(d), ADP's
12 maximum general election coordinated expenditure limit on behalf of Knowles was
13 \$74,620 in 2004. Based on its disclosure reports, ADP reached that limit on or around
14 July 30, 2004. During the period from July 30 through September 30, 2004, ADP
15 reported an additional \$59,541 in coordinated expenditures on behalf of Knowles. Under
16 11 C.F.R. § 109.33(a), ADP could make additional coordinated expenditures as long as it
17 received proper assignment from the national party committee. During the investigation
18 ADP produced three 2004 letters from the DSCC showing that it was authorized to spend
19 the amount in question (information indicates that the DSCC spent the remainder, thereby
20 exhausting the combined state/national party limit).

21 ADP reported \$1,713 in general election contributions to the Knowles Committee,
22 \$3,287 short of its \$5,000 limit. See 2 U.S.C. § 441a(a)(2)(A). Accordingly, any further
23 coordinated expenditures by ADP that exceeded \$3,287 would constitute excessive in-
24 kind contributions by ADP on behalf of the Knowles Committee. See 2 U.S.C.
25 § 441a(a)(7)(B)(i) (contributions to a candidate include expenditures coordinated by any
26 person with that candidate, i.e., "in cooperation, consultation, or concert, with, or at the

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1 request or suggestion of, a candidate, his authorized political committees or their
2 agents").

3 As shown above, applying the conservative "modified FiFo" analysis, the
4 coordinated expenditure amount is \$675,926. Because all the materials included in that
5 figure identified Tony Knowles and/or his opponent and no other candidates (none of
6 these items contained references to any party or generic references to party candidates),
7 the expenditures are entirely attributable to Knowles.⁵ See 11 C.F.R. § 106.1(a)
8 (attribution for publications based on "proportion of space or time devoted to each
9 candidate as compared to the total space or time devoted to all candidates"). Since ADP
10 had exhausted all but \$3,287 of its combined contribution/coordinated expenditure limit
11 for the general election, ADP made, and the Knowles Committee received, excessive in-
12 kind contributions of \$672,639 (\$675,926 - \$3,287).

13 The Act prohibits any political committee from knowingly accepting any
14 contribution in violation of the provisions of 2 U.S.C. § 441a. 2 U.S.C. § 441a(f). In this
15 matter, the Knowles Committee knowingly accepted the excessive in-kind contributions
16 from ADP in violation of the Act's limitations on contributions, because it received the
17 excessive in-kind contributions, was materially involved in decisions concerning the
18 production, creation, content, and distribution of the ADP materials, and was aware that
19 ADP was paying for the materials at issue. See *F.E.C. v. California Medical Association*,
20 502 F. Supp. 196, 203-204 (N.D. Cal. 1980)(a party's knowledge of the facts rendering
21 its conduct unlawful constitutes knowing acceptance.).

⁵ We have removed from the calculations in the "modified FiFo" analysis the cost of a mailer that did not reference Knowles and/or his opponent.

Therefore, the General Counsel is prepared to recommend that the Commission find probable cause to believe Tony Knowles for U.S. Senate Committee and Leslie Ridle, in her official capacity as treasurer violated 2 U.S.C. § 441a(f).

III. GENERAL COUNSEL'S RECOMMENDATION

Find probable cause to believe that the Tony Knowles for U.S. Senate Committee and Leslie Ridle, in her official capacity as treasurer violated 2 U.S.C. § 441a(f).

12/19/2008
Date

Thomasenia P. Duncan
Thomasenia P. Duncan
General Counsel

Susan L. Lebeaux
Susan Lebeaux
Acting Deputy Associate General Counsel
for Enforcement

Sidney Rocke
Sidney Rocke
Assistant General Counsel

Christine C. Gallagher
Christine C. Gallagher
Attorney

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